

97-85-44

FILE NO.

ORDINANCE NO. 527-85

1 (Employee Activities and Drug Testing)

2 AMENDING PART II, CHAPTER VIII OF THE SAN FRANCISCO MUNICIPAL
3 CODE (POLICE CODE) BY ADDING ARTICLE 33A THERETO TO PROHIBIT
4 EMPLOYER INTERFERENCE IN EMPLOYEE RELATIONSHIPS AND ACTIVITIES
5 AND TO PROHIBIT EMPLOYER DRUG TESTING OF EMPLOYEES.

6 Note: This entire Article is new.

7 Be it ordained by the People of the City and County of San
8 Francisco:

9 Part II, Chapter VIII of the San Francisco Municipal Code
10 (Police Code) is hereby amended by adding Article 33A thereto, to
11 read as follows:

12 ARTICLE 33A

13 PROHIBITION OF EMPLOYER INTERFERENCE WITH EMPLOYEE
14 RELATIONSHIPS AND ACTIVITIES AND REGULATION

15 OF EMPLOYER DRUG TESTING OF EMPLOYEES

16 Sec. 3300A.1 POLICY. It is the public policy of the City
17 and County of San Francisco that all citizens enjoy the full
18 benefit of the right to privacy in the workplace guaranteed to
19 them by Article 1, Section 1 of the California Constitution. It
20 is the purpose of this Article to protect employees against
21 unreasonable inquiry and investigation into off-the-job conduct,
22 associations, and activities not directly related to the actual
23 performance of job responsibilities.

24 Sec. 3300A.2 DEFINITIONS.

25 (1) "Employee" shall mean any person working for salary
26 or wages within the City and County of San Francisco, other than
27 members of the uniformed ranks of the police, sheriff's and fire
28 departments, police department communication dispatchers, and any
29 persons operating emergency service vehicles for the City and
30 County of San Francisco.

1 (2) "Employee labor organization" shall mean any
2 organization that exists and is constituted for the purpose, in
3 whole or in part, of collective bargaining or of dealing with
4 employers concerning grievances, terms or conditions of
5 employment, or of other mutual aid or protection.

6 (3) "Employer" shall mean the City and County of San
7 Francisco, any individual, firm, corporation, partnership, or
8 other organization or group of persons however organized, located
9 or doing business within the City and County of San Francisco,
10 that employs personnel for salary or wages, or any person acting
11 as an agent of such an organization.

12 Sec. 3300A.3 EMPLOYER INTERFERENCE IN PERSONAL
13 RELATIONSHIPS OF EMPLOYEES PROHIBITED. No employer may make,
14 adopt, or enforce any rule or policy forbidding or preventing
15 employees from engaging or participating in personal
16 relationships, organizations, activities, or otherwise
17 restricting their freedom of association, unless said
18 relationships, activities, or associations have a direct and
19 actual impact on the employees' ability to perform their assigned
20 responsibilities.

21 Sec. 3300A.4 CONFLICTS OF INTEREST. It is not the
22 intention of the Board of Supervisors in adopting this Article to
23 prohibit an employer from promulgating or enforcing rules or
24 policies prohibiting conflicts of interest, which prohibit
25 employees from making, participating in making, influencing or
26 attempting to influence decisions in which they have a financial
27 interest, as such would be defined under Government code section
28 81000 et. seq. were they public officials, or which prohibit
29 employees from being financially interested, within the meaning
30 of Government Code section 1090, et seq. were they public

INSTITUTE OF GOVERNMENTAL
STUDIES LIBRARY

SUPERVISOR MAHER

BOARD OF SUPERVISORS

Page 2

OCT 28 1986

UNIVERSITY OF CALIFORNIA

8/01872

1 employees, in any contract made by them in their capacity as
2 employees.

3 Sec. 3300A.5 EMPLOYER PROHIBITED FROM TESTING OF
4 EMPLOYEES. No employer may demand, require, or request employees
5 to submit to, to take or to undergo any blood, urine, or
6 encephalographic test in the body as a condition of continued
7 employment. Nothing herein shall prohibit an employer from
8 requiring a specific employee to submit to blood or urine testing
9 if:

- 10 (a) the employer has ~~objective~~, reasonable grounds to
11 believe that an employee's faculties ~~are~~
12 impaired ~~while~~ on the job; and
13 (b) the employee is in a position where such impairment
14 presents a clear and present danger to the physical
15 safety of the employee, another employee or to a
16 member of the public; and
17 (c) the employer provides the employee, at the employer's
18 expense, the opportunity to have the sample tested or
19 evaluated by State licensed independent
20 laboratory/testing facility and provides the employee
21 with a reasonable opportunity to rebut or explain the
22 results.

23 In conducting those tests designed to identify the presence
24 of chemical substances in the body, and not prohibited by this
25 section, the employer shall ensure to the extent feasible that
26 the test only measure and that its records only show or make use
27 of information regarding chemical substances in the body which
28 are likely to affect the ability of the employee to perform
29 safely his or her duties while on the job.

30 Under no circumstances may employers request, require or

1 conduct random or company-wide blood, urine or encephalographic
2 testing.

3 In any action brought under this Article alleging that the
4 employer had violated this section, the employer shall have the
5 burden of proving that the requirements of Subsections (a), (b)
6 and (c) as stated above have been satisfied.

7 Sec. 3300A.6 MEDICAL SCREENING FOR EXPOSURE TO TOXIC
8 SUBSTANCES. Nothing in this Article shall prevent any employer
9 from conducting medical screening, with the express written
10 consent of the employees, to monitor exposure to toxic or other
11 unhealthy substances in the workplace or in the performance of
12 their job responsibilities. Any such screenings or tests must be
13 limited to the specific substances expressly identified in the
14 employee consent form.

15 Sec. 3300A.7 PROHIBITING USE OF INTOXICATING SUBSTANCES
16 DURING WORKING HOURS; DISCIPLINE FOR BEING UNDER THE INFLUENCE OF
17 INTOXICATING SUBSTANCES DURING WORKING HOURS. Nothing in this
18 Article shall restrict an employer's ability to prohibit the use
19 of intoxicating substances during work hours, or restrict an
20 employer's ability to discipline employees for being under the
21 influence of intoxicating substances during work hours.

22 Sec. 3300A.8 ENFORCEMENT.

23 (a) Any aggrieved person may enforce the provisions of
24 this Article by means of a civil action. Any person who violates
25 any of the provisions of this Article or who aids in the
26 violation of this Article shall be liable to the person aggrieved
27 for special and general damages, together with attorney's fees
28 and the costs of action.

29 (b) Injunction.

30 (1) Any person who commits, or proposes to commit,

1 an act in violation of this Article may be enjoined therefrom by
2 any court of competent jurisdiction.

3 (2) An action for injunctive relief under this
4 subsection may be brought by any aggrieved person, by the
5 District Attorney, or by the City Attorney, or by any person or
6 entity which will fairly and adequately represent the interests
7 of the protected class.

8 Sec. 3300A.9 CITY UNDERTAKING LIMITED TO PROMOTION OF
9 GENERAL WELFARE. In undertaking the adoption and enforcement of
10 this ordinance, the City and County is assuming an undertaking
11 only to promote the general welfare. It is not assuming, nor is
12 it imposing on its officers and employees, an obligation for
13 breach of which it is liable in money damages to any person who
14 claims that such breach proximately caused injury.

15 Sec. 3300A.10 PREEMPTION. In adopting this Article, the
16 Board of Supervisors does not intend to regulate or affect the
17 rights or authority of an employer to do those things that are
18 required, directed, or expressly authorized by federal or state
19 law or administrative regulation or by a collective bargaining
20 agreement between an employer and an employee labor
21 organization. Further, in adopting this Article, the Board of
22 Supervisors does not intend to prohibit that which is prohibited
23 by federal or state law or administrative regulation or by a
24 collective bargaining agreement between an employer and an
25 employee labor organization.

26 Sec. 3300A.11 SEVERABILITY. If any part or provision of
27 this Article, or the application thereof to any person or

28 ///

29 ///

30 ///

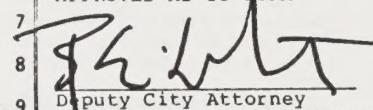
SUPERVISOR MAHER

BOARD OF SUPERVISORS

Page 5

1 circumstance, is held invalid, the remainder of this Article,
2 including the application of such part or provision to other
3 persons or circumstances, shall not be affected thereby and shall
4 continue in full force and effect. To this end, provisions of
5 this Article are severable.

6 APPROVED AS TO FORM

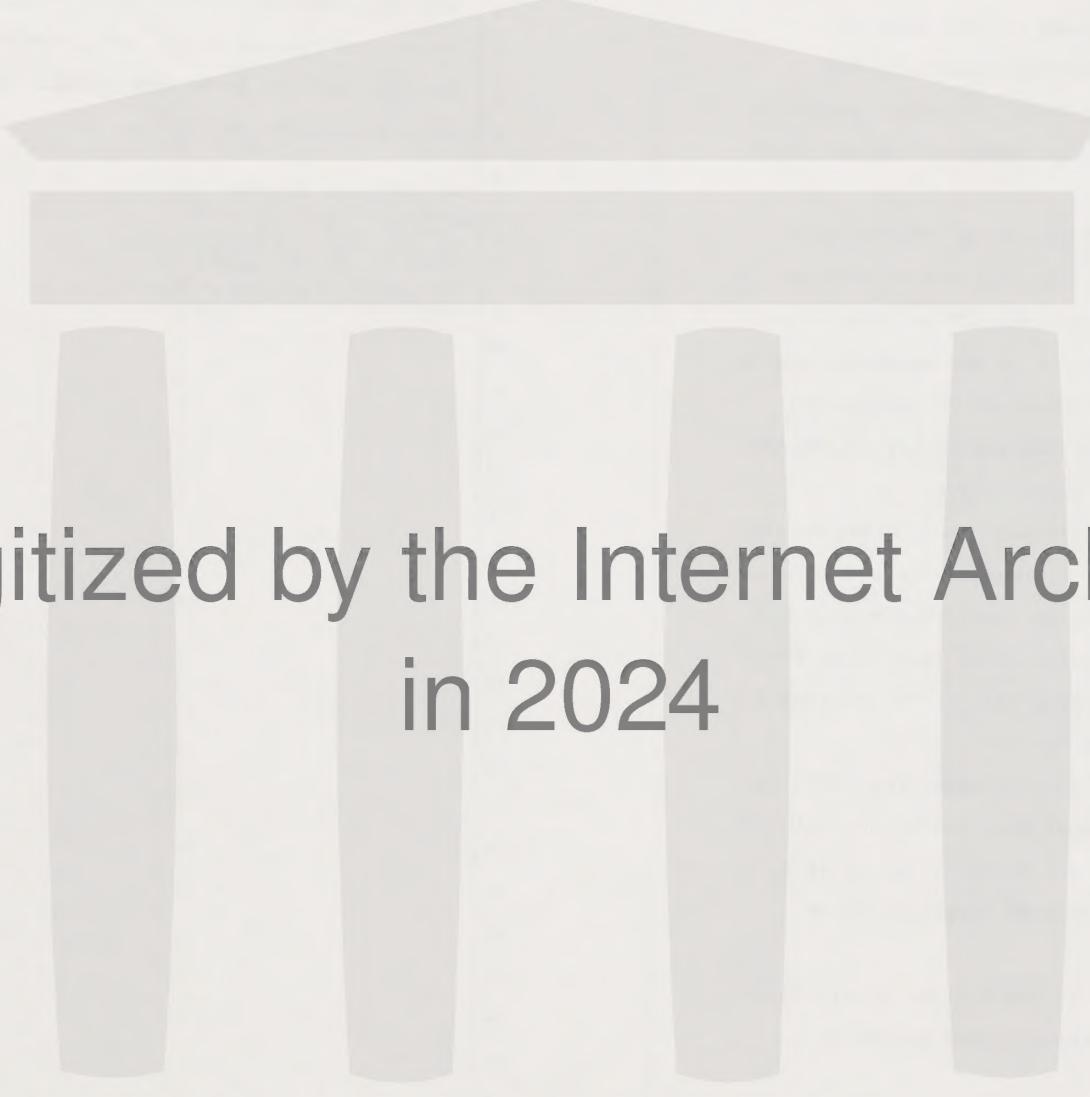
7 
8 Deputy City Attorney

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

SUPERVISOR MAHER

BOARD OF SUPERVISORS

Page 6



Digitized by the Internet Archive
in 2024

<https://archive.org/details/C124886077>

Board of Supervisors, San Francisco

Passed for Second Reading

\$ Finally Passed

November 12, 1985

\$ November 18, 1985

Ayes: Supervisors Britt Hongisto
Kennedy Maher Molinari Nelder
Renne Silver Walker

\$ Ayes: Supervisors Britt Hongisto
\$ Kennedy Maher Molinari Nelder
\$ Renne Silver

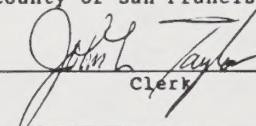
No: Supervisors Kopp

\$ No: Supervisors Kopp

Absent: Supervisors Ward

\$ Absent: Supervisors Walker Ward

I hereby certify that the foregoing ordinance
was finally passed by the Board of Supervisors
of the City and County of San Francisco


John Taylor
Clerk

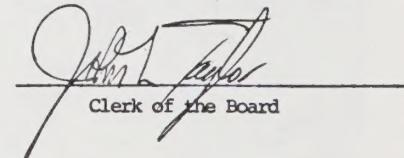
File No.
97-85-44

Date Approved

Mayor

December 2, 1985

I hereby certify that the foregoing ordinance, not being
signed by the Mayor within the time limitation as set forth in
Section 2.302 of the Charter, becomes effective without her
signature in accordance with the provisions of said Section
2.302 of the Charter.


John Taylor
Clerk of the Board

File No. 97-85-44

U.C. BERKELEY LIBRARIES



C124886077